EE Forum of Young Legal, Political & Social Theorists

5th Central and Eastern European Forum of Young Legal, Political and Social Theorists

Separation of Powers & Constitutional Review

Constitutional Rights & Obligations

Program

3–4 May 2013

Alfried Krupp Wissenschaftskolleg
University of Greifswald

Greifswald, Germany

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UNIVERSITÄT GREIFSWALD

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Alfried Krupp Wissenschaftskolleg Greifswald

The Alfried Krupp Wissenschaftskolleg

The Alfried Krupp Wissenschaftskolleg is an academically independent institution sponsored by the Stiftung Alfried Krupp Kolleg Greifswald. The Institute is intended to assist outstanding research and realise projects in interdisciplinary and international co-operation. The Academic Director is responsible for its academic programme.

The initiative to establish the Alfried Krupp Wissenschaftskolleg came from the Chairman of the Board of Trustees of the Alfried Krupp von Bohlen und Halbach-Stiftung, Professor Dr. h. c. mult. Berthold Beitz. Professor Beitz associated this initiative with the idea that an institute for advanced study in the Hanseatic and university city of Greifswald could assist Greifswald to become once again the „liberal, cosmopolitan centre for encounters in the Baltic Sea region“ that it used to be for centuries.

The Alfried Krupp Wissenschaftskolleg is committed to this goal and Alfried Krupp von Bohlen und Halbach‘s conviction that it is „a moral duty to enable one‘s neighbours to participate actively in the progress of knowledge“. The academic programme of the Alfried Krupp Wissenschaftskolleg is made possible by financial support provided by the Alfried Krupp von Bohlen und Halbach- Stiftung.

The University of Greifswald

The University of Greifswald was founded in 1456 and is one of the oldest academic institutions in Europe. Over 12,000 students from all over the world receive the most modern academic instruction and exciting research opportunities in a time-honoured environment. Research priorities at the University of Greifswald are in the life sciences, physics and geosciences, cultural interaction in the Baltic/Nordic region, as well as law and economics. Our scientists engage in inter-disciplinary collaborations across faculties and aim for excellence in both research and teaching.

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CEE Forum Coordinators and Conference Organisers

CEE Forum Coordinators

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Sponsors of the 5th CEE Forum's Conference

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Edition Notice

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Welcome Address

Dear participants,

welcome to the 5th Central and Eastern European Forum of Young Legal, Political and Social Theorists! We are happy and eager to host this year's annual conference of the CEE Forum.

As in previous years, the conference is organised in three concurrent sections: The major general topics of the conference are (1) Separation of Powers & Constitutional Review, and (2) Constitutional Rights & Obligations. In order to meet the diverse interests of the Forum's participants from different disciplines, the (3) Open Section is open to manifold interesting topics from the vast area of legal, political and social theory. We are especially happy that we have won over Prof. André Brodocz (University of Erfurt) to deliver the key note speech on "A General Theory of Judicial Power".

In this booklet, you can find the detailed conference program and some supplementary information about the Alfried Krupp Wissenschaftskolleg Greifswald, the Stiftung Alfried Krupp Kolleg Greifswald and the University of Greifswald as well as the "entertainment program" on Saturday afternoon and night after the official closure of the conference.

We are very much obliged to the Stiftung Alfried Krupp Kolleg Greifswald for its generous financial support, and the Alfried Krupp Wissenschaftskolleg for its manifold organisational help. In particular, we would like to thank our conference assistant, Siri Hummel.

After the conference, all participants will be invited to submit their papers in order to be published in the fourth volume of the "Central and Eastern European Forum for Legal, Political, and Social Theory Yearbook". The details of the review process will then be circulated in a separate Call for Papers.

We wish you an interesting conference with inspiring presentations and discussions!

(Michael Hein) (Antonia Geisler)

Organising Committee
Department of Political and Communication Science
University of Greifswald

Conference Program

Friday, 3 May 2013

8.00–9.00	**Registration**		
9.00–9.30	**Welcome Addresses (Auditorium)** *Dirk Jörke (University of Greifswald, Chair in Political Theory and History of Political Ideas, Stand-in Professor)* *Michael Hein (Organising Committee; University of Greifswald, Chair in Political Theory and History of Political Ideas, Research Associate)*		
9.30–11.00	**Key Note Speech: "A General Theory of Judicial Power" (Auditorium)** *André Brodocz (University of Erfurt, Chair in Political Theory, Professor)* *Introduction and Chair: Antonia Geisler (Organising Committee; University of Greifswald, Faculty of Philosophy, Research Assistant)*		
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Saturday, 4 May 2013

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11.30–13.00	Chair: Jürgen Busch (Vienna) *Balázs Fekete (Budapest):* "Police Power" and the Vertical Division of Powers. Are the Member States Really Underdogs? *Karolina Ristova-Asterud (Skopje):* The Role of National Parliaments in the European Union. The Governmental System and the Challenge of Transforming the EU from a Technocratic to a Parliamentary Polity *Maja Lukić (Belgrade):* Pluralism of Constitutions or of Constitutional Actors? The European Union as a Herald of the New Era of Divisible Sovereignty	**Panel I-5: Current Challenges at European Constitutional Courts** Chair: Marta Soniewicka (Krakow) *Vajk Farkas (Budapest): Can the Will of the People be a limit of Constitutional Review? A Case Study on the Statute of Autonomy of Catalonia* *Rafał Mańko (Brussels):* The Polish Supreme Court and the Socialist Legal Tradition: Rethinking the Conflict Regarding the Constitutional Court's "Interpretive Judgements" *Katalin Capannini-Kelemen (Örebro):* The Access to Constitutional Justice in the New Hungarian Constitutional Framework	**Panel III-5: Media, Social Networks, and Democracy** Chair: Bojan Spaić (Belgrade) *Mary Koysina (Moscow):* Social Networks in Virilio's Theory of "Dromology" *Yulia Lukashina (Dresden):* Collective Action Frames and Information Diffusion in Social Networks *Blerjana Bino (London/Tirana):* Media and Democracy in South East Europe: Contrasting the Role of Public Service and Private Media in Democratisation in the Region
13.00–14.30	**Lunch (Cafeteria)**		
15.30–17.45	**Optional: Boat trip on the river Ryck and the Bay of Greifswald starting point: Museumshafen Greifswald** *(Tour is included! Food and drinks have to be paid individually.)*		
21.00–	**Optional: Saturday night fever feat. "Lupus in Fabula" (Rock'n'Folk); location: "DAS EXIL Music Pub", Steinbecker Street No. 16.** *(Free admission! Food and drinks have to be paid individually.)*		

Abstracts of the Presentations

Key Note Speech

A General Theory of Judicial Power

André Brodocz, Prof. Dr., University of Erfurt (Erfurt)
(Friday, 9.30–11.00, Auditorium)

Judicial power is a complex phenomenon. It is not the same as formal competence. Instead, judicial power only becomes apparent in the supreme court's decisions about the meaning of the constitution. In this sense, judicial power is defined more precisely as the power of interpretation. When analyzing it, we must distinguish between three interdependent levels: the level of the interpreted constitution, the level of the interpreting court and the level of the interpretation. But even then we fail to meet the full complexity of judicial power since judicial power only exists in practice. In order to be able to understand this, an empirical analysis of judicial power must also consider three dimensions: the symbolic conditions of judicial power, its instrumental opportunity structure and its institutional practice.

Biographical Note

André Brodocz (born 1969) studied political science, sociology and modern German literature at the University of Marburg. He did his doctorate in 2001 at the University of Technology Dresden on “The Symbolic Dimension of the Constitution”. In 2007, he habilitated also in Dresden on “The Power of the Judiciary”. Since 2009, he has been professor of political theory at the University of Erfurt. His research interests are institutional theory, power of interpretation, conflict theory and constitutional courts. Since 2010, he has been co-founder and co-editor of the *Zeitschrift für Politische Theorie* (Journal of Political Theory, in German).

Recent publications include:

- *Brodocz, André/Hammer, Stefanie* (eds.) (2013): Variationen der Macht. Baden-Baden: Nomos.
- *Brodocz, André/Pintz, Anne/Schmelzer, Thomas* (2012): Versuch über die Grenzen eines selbstreflexiven Umgangs mit dem ehernen Gesetz der Oligarchie. Ein Vergleich zwischen Greenpeace Deutschland und den Grünen. In: *Bluhm, Harald/Krause, Skadi* (eds.): Robert Michels‘ Parteiensoziologie. Oligarchien und Eliten – die Kehrseiten moderner Demokratien. Wiesbaden: Springer VS: 278–292.
- *Brodocz, André/Schramm, Hannes* (2012): Teilhabe am Politischen. In: *Boer, Pim den/Duchhardt, Heinz/Kreis, Georg/Schmale, Wolfgang* (eds.): Europäische Erinnerungsorte 1. München: Oldenbourg: 207–218.
- *Brodocz, André* (2011): Kampf um Deutungsmacht. Zur Symbolisierung politischer Ordnungsvorstellungen. In: *Lehnert, Detlef* (Hrsg.): Demokratiekultur in Europa. Politische Repräsentation im 19. und 20. Jahrhundert. Köln, Wien, Weimar: Böhlau: 47–62.
- *Brodocz, André* (2009): Die Macht der Judikative. Wiesbaden: VS Verlag für Sozialwissenschaften.

Section I: "Separation of Powers & Constitutional Review"

Panel I-1: Separation of Powers and Constitutional Review –
Perspectives from the History of Ideas (Friday, 11.30–13.00, Auditorium)

Constitutional Review in an Aristotelian Perspective

Miklós Könczöl, M.A., LIM, Pázmány Péter Catholic University (Budapest)

While the concept of constitutional review may sound rather anachronistic in the context of Aristotle's political philosophy, it seems that his texts have something to say about that institution in several respects. The first part of this paper sets the scene by briefly sketching the institutional background of Aristotle's discussions of legislation and judicial decision-making. The second part looks at the possible arguments for and against constitutional review that can be derived from Aristotle's Nicomachean Ethics and Politics. Finally, the third part turns to the techniques of interpretation described in the Rhetoric, considering their suitability for constitutional argumentation.

The *Lit de Justice*, or the Birth of Constitutional Adjudication in France

Paksy Máté, PhD, Pázmány Péter Catholic University (Budapest)

The metaphor of the „lit de justice" [bed of justice] is well-known in contemporary French theories and justifications of constitutional adjudication. The metaphor and its use was developed by Georges Vedel and its function was to justify the right of (or power to) answer of the constituent power to the question raised by the constitutional court. This proceeding is similar to the one which was used during the middle ages in France. French king of this time reinforced his will after the opposition of the local parliament by the way of the ceremony of the lit de justice. The adequacy of the use of the metaphor is justified to that extent that constituent power can always „answer" to the constitutional court. However the medieval context of the mechanism deprives much of the force of the plausibility because that constitutional system did not recognise the principle of the separation of powers, written constitution and the idea of the Rule of Law.

Separation of Powers and Constitutional Review in Kelsen's "Utopia of Legality"

Jürgen Busch, Mag. LL.M. D.E.A, University of Vienna (Vienna)

In his recent book "Hans Kelsen's Pure Theory of Law. Legality and Legitimacy", the philosopher Lars Vinx offers an innovative new interpretation of Kelsens concept of law. He argues that the choice of a particular concept of law is inseparable from political-theoretical questions about the best form of government. On this basis, to him a Kelsenian understanding of legal normativity appears to be justifiable in the light of the constitutional ideal to which that understanding is adequate since that ideal is both coherent and morally attractive. It is so, because Kelsen's Pure Theory of Law – read and interpreted in line with his works in the theory of democracy, his defense of constitutional adjudication, and his advocacy of ‚peace through law' in the international sphere – advocates a constitutional ideal that can be called ‚utopia of legality'. It refers to a constitutional system in which the legality of an act of state that enacts or executes a legal norm is ordinarily sufficient to make that norm fully legitimate and to constitute a duty on the part of the subjects o the law to defer to and to obey it. The reason for this is seen in the argument that such a utopia of legality is a system in which people are subject only to the objective rule of law, and not subject to the rule of men. In this reading, Kelsen's strong principle of legality forms the cornerstone of the constitutional ideal of a 'utopia of legality' and can thus be uphold and defended. Kelsen's own claim that the pure theory of law is adequate to the idea of the rule of law can thus be interpreted as con-

ceiving of the pure theory as adequate to the aim of realizing such a morally attractive ideal of a constitutional system.
In this new reading of Kelsen's concept of law, his advocacy of the institution of a constitutional court forms one of the central elements of his ‚utopia of legality'. On the one hand his general view of adjudication – general (consitutional) legal norms are typically unable uniquely to determine a correct answer to a legal question to be decided by a court – appears to entail that a constitutional court will inevitably take discretionary political decisions that determine the meaning of the constitution instead of enforcing objective limits of political authority. In this respect, a commitment to democracy would consequently lead to the argument that purely political disputes concerning the meaning of the constitution ought to be decided by democratically elected political organs and not by courts. On the other hand and despite this difficulty, Vinx shows that it is possible to understand Kelsen's conception of constitutional review as a conception of guardianship and to integrate it with his understanding of democracy: „Democracy and constitutional review, on a Kelsenian conception, not only turn out not to conflict. They turn out to be mutually supportive institutions both of which are needed to realise the constitutional ideal of a utopia of legality."
Based on these assumptions, the paper attempts to re-construct the role of constitutional review as a decisive element of such a constitutional ideal, with a special focus on the mutual relationship of separation of powers and constitutional review within the Kelsenian concept of law. It will claim that an adequate understanding of this relationship is decisive for a proper understanding and the justifiability of the role of constitutional review in Kelsen's utopia of legality.

Panel I-2: Separation of Powers and Constitutional Review
in Contemporary Constitutional Theory (Friday, 14.30–17.30, Auditorium)

In Favour of Constitutional Review
Miodrag Jovanović, PhD, University of Belgrade (Belgrade)

A number of arguments have been recently raised in both political philosophy and constitutional theory against the judicial review of the constitutionality of legislation. Some of them are placed within a larger reasoning concerning the alleged violation of the separation of powers doctrine, while some others are directed toward challenging the legitimacy of constitutions as such or their normative supremacy in a legal system. In this paper I will concentrate on two intertwined and potentially most detrimental criticisms of constitutional review, most forcefully advanced by Jeremy Waldron and Andrei Marmor. First is the argument from pluralism, which proceeds from the idea that in pluralistic societies reasonable people may reasonably disagree not only about conceptions of the good, but also about the conceptions of the rights. Even though respect for pluralism may be compatible with constitutional entrenchment of certain values that are conducive to pluralism, the key dilemma remains – which institution is to determine which rights people should have, and according to what kind of procedure. The criticism goes on to argue that this task shall be designated to democratic legislatures, and not to constitutions and courts, when they subsequently interpret these documents in the process of constitutional review. Second argument against constitutional review follows from the previous one. It states that allowing decisions by courts to override legislative decisions on these matters fails to satisfy important criteria of political legitimacy. Proponents of the both arguments concede to the thesis that respect for pluralism has to be balanced with the protection of minorities, but they reject the thesis that such a protection yields better results before the constitutional tribunals than in specially designed democratic processes. I will argue that this conclusion is problematic, to say the least, because it requires a set of initial favorable conditions which already assumes too much. Most notably, this

refutation strategy against constitutional review decisively depends upon the existing "commitment on the part of most members of the society and most of its officials to the idea of individual and minority rights" (Waldron). However, in order to develop such a robust individual and minority rights culture, a society has to have at least some of the basic rights already constitutionally entrenched and, presumably, judicially protected. Since history of constitutionalism largely vindicates this claim, it seems plausible to argue that both conceptual and empirical reasons work against the aforementioned refutation of the constitutional review.

Demarchy: Between Politics and Law –
Is Hayek's Idea of Separation of Powers Still Valid?
Lukasz Necio, Student, Jagiellonian University (Krakow)

The liberal institution of separation of powers is largely the product of anglo-saxon Enlightenment. However, its practical applicability seems to exclude the implementation of another liberal rule: the one of separation of law and politics,for classically, liberalism is the ideology of the rule of law which cannot be violated by any political ad hoc actions. The aim of liberalism is to eliminate arbitrary coercion that government may exert over an individual and its efforts to validate them legally.
What is characteristic of the parliamentary practice of the last two centuries is the disappearance of separation of legislative and executive powers. Such diagnosis was put forward by Friedrich August von Hayek. His opinion was that these two functions overlapped. On the one hand, the executive power very often takes over the legislative functions, on the other hand, the legislative power does, in fact, subjugate the executive power and by its right to pass acts of law is able to introduce such rules that will facilitate short-term, emergency and particular needs of the executive power and its principials.
That is why, in Hayek's opinion, the idea of separation of powers should be reconsidered and the political system should be constructed in such a way in which both legislative and executive powers would comply not only with their liberal definitions but would be truly independent. In such system the legislative power's prerogatives would consist in creating general rules of law applying to all citizens, and the executive power would be in charge of day-to-day governing by means of the acts of law which would have to be in compliance with the general, abstract rules previously accepted by the legislative body.
The rules created by the legislative power in no case would aim at serving the state as the means of reaching particular political objectives defined by the executive power. That would be guaranteed by the very essence of the legislative power, by the way members of the legislative power are nominated and by other legislative guarantees. Any conflicts of competence between the two powers would be settled by the Court of Constitution.
In my view, such system, called by Hayek "demarchy", intends to maintain the liberal separation of law and politics. Today, 20 years after the death of that classic of liberalism, we can dare say that the problem he discussed of overlapping the executive and legislative powers is still valid.
In my paper I shall try both to present the main assumptions of Hayek's thought and to critically analyse it. I will discuss possible practical difficulties in its implementation and I will also look at it from a theoretical point of view, putting stress on today's postliberal philosophies in which the ideas of the separation of powers and separation of law and politics are considered as purely liberal, ridiculous concept. The views I have in mind are of John Gray - a longstanding disciple and commentator of Hayek's works.

Societal Constitutionalism in the Light of Althusian Societal Federalism
Mustafa Yaylali, Dr., Istanbul Sehir University

The theory on Societal constitutionalism has been revived again by recent publication of "Societal Constitutionalism" by Günther Teubner. In his celebrated book, Günther Teubner stresses on the importance to curb down the power of Corporation in our globalised world, which has grown in the last decades, by way of constitutions applying to those corporation.
Two decades ago, David Sculi has already took a hand on a book emphasizing on Constitutions applicable on the micro level. He elaborately analysed how social units, residing on the micro level, should exert social control due to the lacuna which the nations states has left. This explains why the call for social control on the micro level has been levering these days in the era of globalisation.
Therefore, I want to dedicate this paper on Societal Constitutionalism and argue that we need a more sophisticated and organic approach to Societal Constitutionalism. I want to claim that we need an organic approach which inhibits the social dynamic of social control and interconnection of social units which uphold inter- and intra-unit relations.
For this reason I want to introduce Althusian version of Societal Constitutionalism by emphasizing on his theory of Societal federalism. How would Althusius expound micro-level/societal responsibility and accountability? What are the main difference between Teubners version of Societal Constitutionalism and Althusian version based on Societal Federalism?

Separation of Powers – Boundaries of Constitutional Review
Johanna Fröhlich, Dr., Pázmány Péter Catholic University/Hungarian Constitutional Court (Budapest)

Mostly, the theoretical problem of constitutional review is discussed on the ground of separation of powers, define it as a question of the collision of different branches of state power. To avoid the arbitrary exercise of these powers, the branches have to be divided, and function separately from each other. This kind of divided functioning can be understood institutionally, or personally. With the means of law, one can prescribe incompatibility rules, rigorous procedure of nomination and election or regulations for a complex system of checks and balances in the scope of duties and responsibilities.
All these questions stems from the view that the problem of constitutional review should be solved in the conceptual frame of separation of powers. According to another approach, the real question is rather the following: what can be considered as 'constitution'. If we can have a consequent answer for this question, so if we can give a suitable concept for the constitution itself, it will mean by necessity that we are be able to define the borders of constitutional review too. Constitutions, which do not have an explicit eternity clause, have two ways of enforce some kind of self-defence. On the one hand, constitutional courts can deduce an implicit eternity clause from the constitution. This can happen by stating that one or more provisions or concrete principles of the constitution is unchangeable even by the modification to the constitution. On the other hand, there are concepts like the "spirit of the constitution", or the "basic structure of the constitution", which are not grounded on a concrete constitutional provision, but a constitutional concept, stuck to a defined jurisprudential notion of constitution.
The task to find the proper balance between the adherence to the text and the efficiency of the constitutional review is always hard. From this point of view, deducing implicit eternity clauses against the text of the constitution is more problematic. From another perspective, using the notion of constitution in order to exclude unconstitutional norms by the means of constitutional review, still raise several questions. Where are the borderlines between the imperative constitutional-legal rules and the constitutional power? Shall we face this problem in the frame of different kinds of conflicting powers or rather in the frame of dogmatic disciplines of the constitution, as a norm? If we choose the first one, how should we define those

powers, which influence the real functioning of a modern constitutional democracy? Is it possible to regulate and restrict all kinds of power by the means of law?
In the latest episodes of the Hungarian constitutional history, the problem separation of powers and the efficiency of constitutional review reached a new level. The two-thirds majority of the Parliament is able to act as a legislative and a constitution making power at the same time. Using the function of abstract norm control by the Constitutional Court, the annulled provisions due to unconstitutionality can be built in the Basic Law. This practice significantly weakens not only the institution of constitutional review and the Constitutional Court, but also the legitimacy of the Basic Law itself. In the presentation I would like to outline the main points of this debate and the latest answers of the Hungarian Constitutional Court.

Historical/Unwritten Constitution and Judicial Review:
Chances and Challenges of a New Constitutional Culture in Hungary
Kálmán Pócza, Dr., Pázmány Péter Catholic University (Budapest)

t.b.a.

Panel I-3: Separation of Powers and Constitutional Review in the European Union
(Saturday, 9.00–13.00, Auditorium)

The EU and the Supremacy Claim in Rulings of the Constitutional Courts in Central Europe
Mariusz Jerzy Golecki, Ph.D., LL.M.,
University of Łódź/Warsaw School of Economics (Łódź/Warsaw)

Recent developments in the EU law raised the question concerning the scope of application and the meaning of the principle of superiority within the context of judicial rulings. The enactment of the Treaty on Functioning of the European Union resulted with many judgments of national courts in some Member States in which the concept of sovereignty still plays an important role. The application of this concept seems to be significant in national legal discourses pertaining to the constitutional law. The paper will thus concentrate on two issues: the difference in the meaning and a content of the concept of sovereignty and to its application by different Constitutional or Supreme courts in different Member States. From the perspective of the theory of judicial discourse it seems that the principle of the supremacy of the EU law remains a double-blade sword. On the one hand there is a view on the primacy of the EU law from the perspective of the Court of Justice of the EU, and on the other the reception of that principle by national courts in the Member States. Additionally it seems that there is no unanimous understanding of the principle of sovereignty. Firstly, the question arises whether the interactive character of the EU law and the EU as an intergovernmental and multilevel structure leads to any deviation from the traditional doctrine of sovereignty. Two models will be analysed within a paper. According to the traditional meaning of sovereignty as offered by J. Austin in jurisprudence or by C. Schmitt in political and legal theory, sovereignty is to be based on the idea of autonomy, exclusivity and independence (external aspect). Additionally sovereignty is traditionally associated with superiority and concentration of undivided power (internal aspect). The second issue concerns the relationship between the legal and constitutional meaning of sovereignty within a context of the EU law. The paper will thus concentrate on the investigation of the most fundamental judgments of both, the Court of Justice of the EU and the constitutional and supreme courts in some Member States (Germany, Poland, Hungary, the Czech Republic). The research question seems to be of double nature, since it pertains to both, the concept of sovereignty referred to the EU and to the relationship between the Member States and the EU itself. It seems that in the judgments of the ECJ ad-

opted the concept of exclusive sovereignty, whereas the jurisprudence of some constitutional courts adopted a more refined concept of sovereignty based on a multilevel and multicentric character of law in Europe. This conclusion seems to be paradoxical, however it could well be explained by the fact that the very nature of judicial dialogue in the EU. Some potential advantages and disadvantages or limits of these strategies will be investigated in a final part of a paper.

Judicial Power in Federations. An Empirical Analysis of Institutional Conflicts between Constitutional Courts in Federal Systems

Steven Schäller, M.A., University of Technology Dresden (Dresden)

Constitutional Courts are at the institutional core of federal systems. Therefore their role as arbitrators of institutional conflicts within federations is acknowledged from scholars and politicians as well. Less scrutiny gains the still important relation between Constitutional Courts of different levels of government that are bound to cooperation through the institutional setting of a federal system. That relationship will be discussed in the paper to be presented in a twofold way. The paper aims at the relationship between the German Federal Constitutional Court (FCC) and the European Court of Justice (ECJ). Starting from the already established relationship between the FCC and the Constitutional Courts of the Länder the paper draws some conclusions from the jurisdiction of the courts and from the institutional setting the courts are located in. Such a political science perspective is clearly distinguishable from a formal legal perspective and relies on the theoretical framework delivered by the recent works of Hans Vorländer and André Brodocz. With that framework it can be shown that the dominance of the FCC over the Constitutional Courts of the Länder relies to some extent on the jurisdiction of an institution and to some extent in its institutional setting. That finding gets further support by the institutional developments after German re-unification. The newly established Länder Courts are provided with a better institutional setting, i.e. more resources or a greater independence from the executive and legislative branche, which leads directly to a shift of relationship between the FCC and the Courts of the Länder in general. That shift reflects the jurisdiction. The question will be then what the past institutional conflicts of the FCC and the Constitutional Courts of the Länder are telling us about the relationship of the FCC and the ECJ to come? – Of course only if we think of the future European Union as a kind of a federal system, which will be a premise to the notion of a federal relationship between FCC and ECJ. The paper assumes that the institutional conflict between FCC and ECJ is still open and not yet decided. But the FCC has some slight advantages in terms of the institutional setting, which can be played against the general trend of a more integrated European Union with an evermore important ECJ. The main part of the paper will concentrate on that assumption by focusing on the twofold analysis outlined in the first part of the paper: A close and comparative look on the institutional setting of the courts and a analysis of the jurisdiction of both courts as strategic moves of two competing institutions bound to cooperation.

Origins and Future of the EU Principle of Institutional Balance

Andreas Orator, Mag. Dr. iur., LL.M., diplômé,
Vienna University of Economics and Business (Vienna)

The paper deals with the principle of institutional balance in European Union (EU) law, whose scope and legal relevance remain as contested as its originating from and its relationship to the separation of powers doctrine. Accordingly, the paper will address selected salient questions, both from a dogmatic and a theoretical angle. In particular, the paper will make use of a US-EU comparative constitutional approach to illustrate the scope and development of the principle. Particular attention will be given to the European Court of Justice (ECJ), which, arguably, played a major role in carving out the principle from the European Treaties.

In particular, the paper will trace the evolution of the doctrine from a power-oriented to a function-oriented approach in US constitutionalism and as compared to EU law. As an illustrative case, the US Supreme Court's gradual adaption to come to constitutional terms with independent regulatory agencies, originally referred to as a "fourth branch of government", shall be presented. Against this backdrop, the ECJ's approach to non-Treaty bodies will serve as a lead case to apply the principle of institutional balance. While independent agencies and comitology are often referred to as hard cases as regards their reconciliation with institutional balance and are, as argued in the paper, to remain so for the future, it was precisely the Meroni judgment of 1958 on a non-Treaty body, in which the Court made explicit the principle of institutional balance for the first time, as literature correctly points out. Also, whether the Court's terminology of the time ("balance of powers") might also indicate a different conceptual understanding of "institutional balance", a term which was coined by the Court only later, shall be assessed.
Despite its largely uncontested recognition as a normative, actionable, general principle of EU law, it flows only implicitly from the Treaties in general and Art 13 of the Treaty on the Functioning of the EU in particular. The Court positions the requirement for the respect of institutional balance, nonetheleast, in the common tradition of EU Member States on separation of powers. Notwithstanding the difficulties of applying the Montesquieu'an concept of legislative, executive, and judicative "pouvoirs" on modern Western state constitutions in general and the particular predicament to migrate the historical doctrine of separation of powers doctrine to a non-statal entity such as the EU, the principle of institutional balance might, to a certain degree, be understood as an equivalent to a functional perspective on the separation of powers doctrine. Three dimensions of institutional balance under EU law, namely separation, non-encroachment, and balance, shall be outlined and their scope and use compared state constitutions' separation of powers doctrines.

Separation of Powers Reconsidered: A Proposal for a New Theoretical Model for the Separation of Powers at the Beginning of the XXI Century
Martin Belov, PhD, University of Sofia "St. Kliment Ohridski" (Sofia)

The classical theories for separation of powers, i.e. those of Montesquieu, Locke etc., have predetermined both the modern constitutional law and the modern political thinking. These theories however have been created in a socio-historical and legal context which is quite different from the situation at the beginning of the XXI century. That is why there is a need to critically reconsider the traditional concepts and the normative ideas concerning the "classical" tripartite separation of powers. Moreover both the constitutional schemes for distribution of functions between different state bodies as well as the practical interaction of the veto players in the political system provoke the search for improved theoretical paradigms pertaining to the separation of powers.
In my presentation I am going to defend the need for reconsideration of the traditional way we think about the legislative, the executive and the judicial power. I will tackle the issue whether the Parliament is indeed the titular of the legislative power on the basis of historical, comparative and philosophical arguments. The influence of the institutions for constitutional control on the legislative power will also be presented. The dogma that the courts are only law application machines will also be criticised in the light of legal and political science arguments. Here I will analyse the role mainly of the supreme courts as well as of the European Court of Human Rights and the Court of the EU in creating judicial precedents in the context of the ideas for the virtual amendment of the Constitutions, the European Charter on Human Rights and the EU law.
Moreover the effects of the EU integration on the legislative and the executive power will be discussed together with the partially interrelated question of the rising prominence of the bureaucracies and the technocratic governance. The problems of the separation of powers in

the EU in general and of the executive federalism of the EU as a multilevel constitutional system will be explored. I will defend the thesis that the role of the non-state veto players, i.e. the political parties and the lobbies, is of crucial importance for understanding the institutional (im)balance.
Furthermore, the need for delimitation of "new" state powers will be stressed. I will present a theoretical defense of the existence of external, finance, symbolic-communicative and patronage power. The delimitation of these branches of the state power is based on the simultaneous application of three criteria: first, the object of the state power, second, the institutions applying the distinct powers and third, the specific instruments for accomplishment of the state power. I will provide a typology of the distinct powers based on comparative and historic analysis of the constitutional infrastructure of the modern state. Moreover I will explore the issue of the temporal separation of powers.

"Police Power" and the Vertical Division of Powers.
Are the Member States Really Underdogs?
Balázs Fekete, PhD, LLM, Pázmány Péter Catholic University (Budapest)

Vertical division of powers is an essential component of federal constitutional orders. It guarantees the smooth cooperation between the supranational government and Members States by a precise delimitation of their competences. Competences and powers of the supranational level have widely been analysed and discussed in constitutional law and political science scholarship. However, relatively less attention have been paid to the scope and extent of Member State powers in the same literature.
In order to provide a conceptual analysis of Member State competences this presentation will discuss the concept of "police power" as it emerged in the US constitutional law doctrine. Special emphasis will be laid on the case law of the Supreme Court since it significantly contributed to the clarification of this ambiguous concept. Secondly, the presentation will focus on the recent EU developments. A working group has already discussed the scope of Member States powers during the Constitutional Convention, while the Lisbon Treaty enacted an article enlisting its main components (Art. 4 (2) TEU).
In conclusion, the presentation will attempt to make a synthesis of the US and European approach, thereby drafting a conceptual framework for the analytical understanding. In doing so it will discuss the (i.) legitimizing of Member State "police power" in a federal setting, (ii.) its main components on a comparative basis, (iii.) its relation to the competences of the supranational level, and (iv.) the possible future trends of development in a European scene becoming a more and more federal one.

The Role of National Parliaments in the European Union.
The Governmental System and the Challenge of Transforming the EU
from a Technocratic to a Parliamentary Polity
Karolina Ristova-Asterud, LL.B, LL.M, M.Sc., Ph.D,
St. Cyril and Methodius University of Skopje (Skopje)

My presentation will explore the development of the parliamentary dimension of the EU, more specifically the development of the role of national parliaments (NP) in the EU, and how this development is influencing both the balance of power and the very ontological nature of the EU as a polity. I subscribe to the viewpoint that the EU represents a polity with an original mixed system of government in which by gradual, bottom-up induced treaty reforms, its prevalent character of a technocratic regulative polity is being transformed into a more democratic parliamentary polity.
Over the years, this transformation has been mostly manifested through the development of (national) parliamentary mechanisms for parliamentary control and parliamentary scrutiny of

the national governments' activities in the so-called European Affairs, reaffirmed and strengthened with the Lisbon Treaty ("The Treaty on Parliaments"), especially with the newly established role of NP in the protection of the principle of subsidiarity in the EU legislative process. However, this transformation should not be taken for granted and may be stalled, even possibly reversed in the future. In that direction, it is necessary to carefully scrutinise the challenges NP face in their newly found roles in the EU governmental system (including in the much ignored role of NP in the enlargement process, especially from the perspective of NP of the applicant/candidate countries, for which there are no existent benchmarks established in the Progress reports by the EU Commission!).
I will argue that that the success of this so-called process of (national) re-parlamentarisation of the EU would prospectively determine the future institutional design and the very nature of the EU as a polity with, more or less, four possible development avenues i.e. four possible models: two inspired by the Westphalian paradigm (the model of consequent intergovernmentalism and the model of European federal statehood) and two supranational models (the model of sui generis supranationalism and the model of comparative supranationalism). The underlying question of these four models is whether parliamentary democracy is possible and viable beyond (European) nation statehood. This question has both empirical and axiological dimension about the future of the EU polity, which will also be addressed in the presentation.

Pluralism of Constitutions or of Constitutional Actors?
The European Union as a Herald of the New Era of Divisible Sovereignty
Maja Lukić, LL.M., Belgrade University (Belgrade)

The institutional development of the European Union in the course of the last two decades has inspired numerous legal academics to promote the doctrine of „constitutional pluralism" as a new form of constitutionality that transcends the classical dichotomy between states and international organisations. It is rather conspicuous that these changes of internal architecture of the EU have been, firstly, continuous over a substantial period of time, secondly, quite gradual, and, thirdly, unidirectional, directed towards achieving an ever more unifying system – alignment of a greater number of interests, recognition of more common values, deploying more powerful resources for protection of common interests and values, as well as towards an ever greater solidarity witin the system. A substantial part of these changes was caused by case law of the European Court of Justice, and based on the alleged quality of autonomy of the EU legal system. The described dynamics of the institutional changes within the EU suggests that the doctrine of constitutional pluralism should be considered as the appropriate method for understanding and monitoring changes of the EU itself and particularly of its legal nature. Apart from that specific use, it seems to us that constitutional pluralism as a concept has very limited applicability in describing the legal nature of the EU. The grounds of such assessment are twofold: both the dynamics of the subject of qualification, that has already been described, and the ambivalence of the concept itself. If constitution is understood as a set of norms on the highest authority, its competences and limitations, as well as on protection of core values of a political community, then it is difficult even in a historical perspective to identify a single political community in which several such sources of law coexisted.
The differentiation between evolutive and revolutionary constitutions, however, turns out to be rather suitable to the EU, for only in the case of evolutive constitutions it is possible to recognise another sort of pluralism – pluralism of constitution-making powers. The classical example of evolutive constitutionality – the one of the United Kingdom – was born out of a pragmatic compromise of several constitutional factors. Having regard to the overall picture of the European Union, the applicability of the model of evolutive constitutionality seems to be far greater than the usefulness of the alternative model of revolutionary constitutionality.
The concept of evolutive constitutionality is capable of allowing for the possibility that sovereignty may be divisible. This phenomenon, in the case at hand the division of sovereignty

between the European Union and its member states, means also a conceptual decoupling of the quality of sovereignty from the concept of state, for it is evident that the European Union may not be regarded as a state. The model of sovereign nation state has subdued older models of political communities, but one should not forget that this model is relatively young in comparison with the principle of democratic governance, and even in comparison with the idea of European unification. From the time-frame in which the nation state has been the prevailing model of political community, the period during which representative democracies account for a material portion of political communities is even shorter. We believe, therefore, that the concepts of democratic governance and responsible government may not be identified with the concrete model of representative democracy, but that these concepts may be realised also in situations in which a certain material quantum of sovereignty is not bestowed upon a nation state which articulates its political decisions in accordance with the model of representative democracy.

Panel I-4: Contingency in (Constitutional) Adjudication: Interpretation and Politicisation (Saturday, 9.00–11.00, Conference Room)

Responsive Legal Interpretation:
A Challenge to the Doctrine of Separation of Powers and Constitutional Review?
Jakub Łakomy, LL.M., University of Wroclaw (Wroclaw)

In my paper I will analyse the concept of responsive legal interpretation (hereinafter: “RLI”). I will focus on its philosophical roots and its implications for contemporary democratic regimes with particular emphasis on the doctrine of the separation of powers and the dominant model of constitutional review.
In the first part of my paper, as a point of departure, I shall work on the model of “responsive law” introduced by Philippe Nonet and Philip Selznick. I will claim that responsive law is the most accurate model (an “ideal type” in the Weberian sense) of how law functions in contemporary plural late modern societies. I will elaborate on the main features of this model, which seem to be most relevant to my topic. These include especially its openness, flexibility and “responsiveness” to the environment in which law operates; the significant authority of purpose in legal reasoning; and, finally, its emphasis on the political character of legal advocacy and legal interpretation. Among other socio-political conditions and challenges, to which the abovementioned model seems to be an answer, I will analyse the issue of minorities and the politics of recognition, as understood by Charles Taylor and Nancy Fraser.
In the second part of my analysis I will claim that, notwithstanding its socio-legal soundness and high explanatory potential, Nonet's and Selznick's analysis of the model of responsive law lacks sufficient philosophical grounding both in social philosophy and in epistemology, especially with regard to those parts of their model which are concerned with legal interpretation. Therefore, my paper will focus on proposing a philosophical horizon for an explanation of legal interpretation processes under the RLI model. In order to attain this goal, I will draw inspiration from two philosophical traditions: first of all, Chantal Mouffe's and Ernesto Laclau's theory of discourse in connection with Mouffe's concepts of “politics”, “the political” and “agonistic pluralism”; and, secondly, “experimental” legal pragmatism in the meaning used by Justin Desautels-Stein.
Finally, in the last part of my paper I will try to fruitfully connect the narratives of legal philosophy and political theory. I will draw on Claude Lefort's view about the replacement of the notion of a “legitimate power” by the notion of a “regime founded upon the legitimacy of a debate as to what is legitimate”, employing the conceptual framework of RLI and blending it with elements of legal pragmatism and Mouffe's political theory. The essential questions I will put forward will be twofold. First of all, is the conventional concept of the “separation of powers”

reconcilable with the fundamental tenets of RLI or, perhaps, should it be rejected and substituted for an alternative reconceptualisation of the distribution of political power in agonistic democracies. Secondly, I will explore the issue whether, in the light of the RLI model, constitutional review should be perceived primarily as a political, rather than a merely interpretive, enterprise.

Constitutional Interpretation and Separation of Powers – A Look through Betti's Theory of Interpretation

Jovana Parlić, Doctoral Student, University of Belgrade (Belgrade)

The basic idea of the paper is to investigate different approaches to the issue of justified constitutional interpretation, by pointing to the integrity and indivisibility of this process. More precisely, the focus is on apparently contradictory requirements of objectivity and subjectivity, as developed within Emilio Betti's theory of the cannons of interpretation. A particular emphasis would be on contrasting methodological orientations in constitutional interpretation of the United States. Key approaches o the subject matter are discussed as different perspectives of solving the tension between cannons of interpretation, in terms of giving preference either to objective or to subjective moment. The main objection to conceptions that give preference to subjective moment relates to the legitimacy of judicial activity, whose role is unjustifiably getting political connotations along with the legal ones. These, allegedly leads to violation of both legal certainty and the traditional system of separation of powers. Against this argument, it will be argued that along with legal certainty, the interpretation also requires dynamics and actuality. Greater freedom of constitutional interpretation does not necessarily lead to a distortion of the traditional separation of powers. On the contrary, it can be considered as a guarantee of separation of powers, which improves the potential objectivity of interpretation. Therefore, both requirements, objective and subjective, are necessary and desirable. Process of interpretation, through interaction of antonymic requirements and their synthesis, thus, provides the most adequate solution.

Is Legal Interpretation Conversation?

Bojan Spaić, MA, University of Belgrade (Belgrade)

Legal interpretation has in recent decades become one of the main topics in legal theory, with legal theorists going so far as to declare law itself interpretative in nature. However, in recent times, more specific theories that provide us with theoretical understanding and normative accounts of legal interpretation. In this article I shall access one of those positions – the thesis that legal interpretation is in essence a communicative process between the legislatures and the courts that has been put forward by Andrei Marmor. This model of analysis contradicts the traditional hermeneutical view of interpretation that accesses it as a kind of reading. I will try to argue that the traditional view gives us a better understanding of legal interpretation and that the communicative model isn't able to fairly access some of it's basic characteristics.

What Is "Politicisation" of Constitutional Courts?

Michael Hein, Dr./Stefan Ewert, Dr., University of Greifswald (Greifswald)

The politicisation of constitutional courts is one of the best acknowledged phenomena in the history of constitutional review. Its theoretical reflection dates back at least to the controversy between Hans Kelsen and Carl Schmitt (1928–1931). Today it is common sense in all scientific disciplines that study constitutional courts that there is no "pure" legal constitutional review without any political influences: Constitutional review is certainly not detached from the gravitation field of contention for gaining, exercising and preserving political power. Addition-

ally, the authentic interpretation of the often vague and amenable constitutional law makes constitutional courts to regularly take part in legislation and constitution-making.
Nevertheless, the concepts and terminologies which are used to describe and analyse this phenomenon vary in different ways and it often seems to be unclear what is exactly meant. Our presentation intends first to give a literature overview of this divergent field of research in order two answer the question, which manners of use of the term "politicisation" concerning constitutional courts are to be found in political and legal sciences. Second, we will systematise the different notions and concepts and develop a functional conception which focuses on the decision-making processes within constitutional courts.

Panel I-5: Current Challenges at European Constitutional Courts
(Saturday, 11.30–13.00, Conference Room)

Can the Will of the People be a limit of Constitutional Review?
A Case Study on the Statute of Autonomy of Catalonia
Vajk Farkas, PhD student, Pázmány Péter Catholic University (Budapest)

In my presentation I would like to reflect to the question, what are the borders of the constitutional review. I would like to represent the dispute related to the decision issued by the Spanish Constitutional Court on the new Statute of the Autonomous Region of Catalonia. In my opinion this case study is able to illustrate an aspect of the constitutional review's limits.
Spain is composed by 17 autonomous communities. The institutional framework and the competencies of each community is regulated in the so called Statutes of Autonomies, which in every case have to be approved by the regional and by the central Parliament and in some cases by a regional referendum. The new Statute of Catalonia was adopted in 2006 with the mentioned process and entered into force in the same year. The new Statute granted wider competences and institutional independence ever for Catalonia and the Spanish People's Party impugned it before the Constitutional Court which decided on the question after four years in 2010.
In the decision the Constitutional Court declared unconstitutional many provisions of the Statute and many provisions were interpreted by the Court. The Constitutional Court also declared unconstitutional parts of the Statute related to the Catalans national identity and interpreted the Statute's preamble's declaration on Catalan as a nation that it does not have any effect for interpretation. These declarations were highly criticised by the Catalan society and by many actors of the political, scientific and social life of Spain. After the publication of the decision a never seen magnitude of one and a half million people manifestation was organised in Barcelona against the Court's ruling.

The Polish Supreme Court and the Socialist Legal Tradition: Rethinking the Conflict Regarding the Constitutional Court's "Interpretive Judgements"
Rafał Mańko, Mag.iur., European Parliament (Brussels)

There has been an ongoing controversy between the Polish Supreme Court and the Polish Constitutional Court regarding the binding force (qua precedent) of the so-called "interpretive judgments" of the latter. An "interpretive judgment" is a decision, in which the Constitutional Court rules that a certain legislative measure is constitutional only if construed in a specific way, but is unconstitutional if construed otherwise. The Supreme Court has, on many occasions, refused to recognise the authority of such judgments, resorting to ultra-formalist arguments in support of its stance.
In my paper I will argue that what is actually at stake here, is a major conflict between two competing currents of legal culture in Poland: a formalist one, which (in the Central European

context) is a survival of the Socialist Legal Tradition, and an anti-formalist one, inspired by the developments in legal theory and practice in the Western world during the 20th century, and in particular after World War II.
I will analyse the arguments put forward by the Supreme Court and the Constitutional Court from the point of view of legal theory in order to show that the Supreme Court relies on narrow and outdated views about the concept of law, legal sources and legal interpretation, whereas the Constitutional Court takes stock of the recent developments in Western European legal theory and practice, which, during the last decades, have become more substantive and anti-formalist.
I will indicate that the conflict over "interpretive judgments" is, in fact, only an example of a wider phenomenon: the discourse of the Supreme Court (and the ordinary judiciary) is, in principle, formalist, textualist and deductive. In contrast, the discourse of the Constitutional Court is rather anti-formalist and substantive, with a key role played by the balancing of rights and interests, policy arguments and purpose-oriented interpretation. This difference can be explained inter alia by the deep institutional differences between the two Courts. The Supreme Court, appointed de facto by cooptation, is an emanation of the ordinary judiciary, which remains embedded in the Socialist Legal Tradition. The Constitutional Court, on the contrary, is free from such ties, as it is appointed in a highly political process, mainly from among academics and politicians.
Although the Socialist Legal Tradition has been pronounced "dead and buried" and prominent Polish jurists repeatedly renounce any links with that tradition, the conflict over the "interpretive judgments" seems to indicate that the contrary may be true. Survivals of the period of "actually existing socialism", such as ultra-formalism and extreme textual positivism, although officially repressed, are still present in the working legal thought of many Polish judges. Even if Supreme Court Justices do not admit (or even are not aware) that they are drawing inspiration from the Socialist Legal Tradition, their very hostility to the ideas of binding precedent and goal-oriented constitutional interpretation indicate that their mindset still remains under the strong influence of the legal culture of "actually existing socialism".

The Access to Constitutional Justice in the New Hungarian Constitutional Framework
Katalin Capannini-Kelemen, PhD, Örebro University (Örebro)

In April 2011, after a remarkably short debate lasted two weeks, the Hungarian Parliament adopted a new constitution, named Fundamental Law (Alaptörvény). Hungary was the only formerly socialist country that did not approve a new constitution after the breakdown of the communist regime. In the 2010 elections the right-wing coalition (Fidesz-KDNP) won two-thirds of the seats in the unicameral Parliament. Consequently, the new government could draft and approve a new constitution without the participation of the opposition. As to the composition and the powers of the Constitutional Court, only part of the rules can be found in the text of the Fundamental Law (in Articles 6, 24 and 37). In order to have a complete picture of the changes brought to the system of constitutional review, we had to wait for the new Constitutional Court Act, adopted in November 2011. Both the new Fundamental Law and the new Constitutional Court Act entered into force on January 1, 2012. My paper aims at presenting and evaluating one particular aspect of the new scheme: the access to the Constitutional Court. There have been significant changes. The abolition of actio popularis and the concomitant introduction of full constitutional complaint opened a new scenario for the Hungarian Constitutional Court in which a shift of emphasis from abstract to concrete review may be expected. Indeed, the constitutional review of judicial decisions was not among the competences of the Hungarian Court before this reform. There was an instrument, by legal scholars called normative constitutional complaint, which could be used in the ambit of legal proceedings before an ordinary court against the legal norms applied by that court and not against the judgement itself. The Fundamental Law adds also a third version of constitutional

complaints that can be filed against a legal provision which violates constitutional rights directly, without a judicial decision, and there is no procedure for legal remedy or the complainant has already exhausted it. Now that there is no more actio popularis, constitutional complaints have become much more relevant in Hungarian constitutional justice. Before 2012 complainants preferred the actio popularis to the normative constitutional complaint, as it did not require any proof of personal interest or exhaustion of remedies, and there was no deadline. On the other hand, the Constitutional Court tried to make up for the absence of a full constitutional complaint and to bring ordinary court judgements in its sphere of competence by applying the concept of living law, borrowed from the Italian Constitutional Court. One year after the entering into force of the new scheme it is possible to make an early evaluation of the practice based on the new framework. Has the abolition of actio popularis been really compensated by the introduction of two new forms of constitutional complaint? How are these new forms being used by the complainants and interpreted by the Hungarian Constitutional Court? Can we already after one year delineate the new trends of case-law? The paper aims at answering these questions.

Section II: "Constitutional Rights and Obligations"

Panel II-1: Rights and Obligations in Contemporary Political and Legal Theory
(Friday, 11.30–13.00, Conference Room)

Another Brick in the Wall? A Libertarian Outlook on Constitutional Rights, Individual Obligations, and the Boundaries of Legal Consistency

Axelle Reiter, Dr., Verona University (Vicenza)

The proposed paper will analyse the interaction between constitutional rights and constitutional obligations from a libertarian standpoint. In this perspective, rights are conceived as choices and absolute side constraints on other laws and regulations, as well as on human interactions more generally, and obligations are derived from pre-existing rights rather than the other way around. This conception of rights presents the advantage of bypassing the risks of utilitarian trade-offs, as well as paternalist and moralist encroachments upon people's exercise of their liberty, and rules out the balancing of conflicting rights and other interests. The recognition of individual obligations in libertarian theories will be studied from three angles: (1) the negative duty of non-interference; (2) the acceptability of (limited) positive duties; and (3) the co-possibility of the various duties entrenched in a given constitution.

Basic rights empower individuals with a veto over those acts and measures that interfere with their personal choices; hence, creating a corollary (negative) obligation of non-interference that binds all societal actors. Accordingly, only the symmetric rights of others can limit individual freedoms and entitlements, in cases where these rights are abused for 'liberticidal' purposes. In contrast, it is illegitimate to limit human rights, unless right-holders seriously misuse their rights and bring them into play in the aim of destroying the rights of others. As a matter of principle, any departure from this general rule of liberty is unjustifiable. Rights are always trumping non right-based considerations and are never to be weighted, balanced, or traded off, in order to promote utility, the general welfare or majority preferences.

Yet, from an analytical viewpoint, a substantive theory needs to explain the entire range of legal rights generally enshrined in constitutions, which includes typically positive rights, like procedural rights or economic and social rights. Subsequently, two questions must be raised (and answered in turn) in relation to the obligations generated by such rights: first, their accommodation in a libertarian theoretical framework and, secondly, their reconcilability with the obligations that ensue from other rights. Interestingly, the trouble does not lie so much in the

difficulty to justify these rights in a libertarian frame, as in the irreconcilability of the corollary obligations with those produced by negative rights or other positive rights.
This leaves the conflict between constitutional rights unresolved in practice, if not in theory. In the absence of an internally coherent set of rights, it is put forward that the only way to escape balancing and unwanted trade-offs reside in an a priori hierarchy of clashing entitlements. The most primordial rights could be entrenched unconditionally, while lesser ones would merely constitute trumps on competing claims and considerations that are not right-based and give way in inter-rights conflicts.

Public Reason between Facts and Principles
Wojciech Ciszewski, MA, Jagiellonian University (Krakow)

In the conference paper, the author will confront a challenging and fundamental problem set against the backcloth of contemporary liberal philosophy. The issue being that of public reason - one of the most important elements within John Rawls' political idea of justice. In short, as Rawls describes it, the concept of public reason is a way of formulating plans characteristic for democratic societies, setting goals and making decisions. Public reason is a political form of reflection in which every citizen can participate.
The paper focuses on one issue connected with the idea of public reason – the foundation of its normative status and its claims to moral validity. Rawls states that public reason gives account of actual democratic practices and habits (descriptive aspect). What is more, he argues afterward that being guided by public reason within the political domain is advisable and morally obligatory (normative aspect). The questionable point of the argumentation is the relation between both of the dimensions mentioned above, constituting the problem of transition from facts to principles. It is not clear to comprehend why the Rawlsian rules of political reasoning are supposed to be normatively binding. The problem of status of public reason is certainly the most significant aspect of the conception of public reason upon which, in point of fact, the entire success of Rawlsian political theory depends.
The author will suggest a search for a the solution to the transition problem on the basis of political liberalism, to be exact within a careful examination of the Rawlsian strategy of justification. It focuses on two key strategies of the justification system: a constructivist strategy (embodied by the method of political constructivism) and a contractualist strategy (embodied mainly by the overlapping consensus idea). The author aims, firstly, at summarizing the philosophical discussion concerning the normative status of public reason, and secondly, at proposing his own standpoint concerning the normativity of public reason and formulating an answer to the transition problem. The hypothesis assumes that it is impossible to base such strong normative claims of public reason merely on descriptive facts.

Constitutional Rights and Duties from the Perspective of Responsibility
Horváth Gábor, law student, Pázmány Péter Catholic University (Budapest)

Responsibility means more than just a possible or necessary correction in terms of justice and fairness. It is the main motivating factor in the on-going improvement of law, legislation, and social institutions. Responsibility helps to form a perspective that is capable of reflecting on the disproportionalities and differences given in the social conditions, thus contributing to the restoration of a fragile social balance. Thus, it seems important to re-interpret the concepts of constitutional rights and duties in the light of their relationship to responsibility.
The presentation seeks to explore, on the one hand, how the ability of achieving something leads, through the functioning of responsibility, to the duty to do so. On the other hand, it goes to describe the relationship between constitutional rights and this functioning of responsibility. As a specific instance, the intimate link between the constitutional rights protecting the interests of future generations and the duty to preserve the integrity of our human

identity is examined. In this context, also the temporal dimension of responsibility and the role of political responsibility in the shaping of constitutional rights is briefly discussed.

Panel II-2: Rights, Obligations and Democracy (Friday, 14.30–16.00, Conference Room)

Individual Rights and the Common Good
Szilárd Tattay, PhD, Pázmány Péter Catholic University (Budapest)

Paradoxically, even if starting from a markedly individualist approach, the modern counterparts of the classical idea of public good, the Rousseauian concept of 'volonté générale' and the utilitarian notion of 'public interest' both tend to supersede and neglect the individual's will, interest and rights.
The concept of 'general will', as understood by Rousseau, has become the most common scarecrow against the idea of common good. This can be easily explained by the fact that it has virtually nothing to do with the actual will of either the individual or the people, still it "is always right and tends to the public advantage", hence "whoever refuses to obey the general will shall be compelled to do so by the whole body. This means nothing less that he will be forced to be free."
The axiom of utility maximisation, on the one hand, equates the 'public interest' with the simple aggregate of the individuals' utility, having no quality separate from or independent of individual interests; on the other hand, it does not take into account the differences between persons, therefore it is indifferent as to how the common goods are distributed among the members of the society, and can permit the sacrifice of the goods or the limitation of the fundamental rights of certain individuals for the sake of the general welfare.
To be sure, the original – ancient and medieval – Aristotelian understanding of the common good also implies that in case of conflict the good of the community should take precedence over that of the individual. Nevertheless, in the classical way of thinking the public and the private good are seen as typically existing in harmony with one another rather than in a state of conflict. In my paper I will try to examine, albeit in a tentative and sketchy way, the prospects of restoring the original meaning of the term and thus forging a concept of common good which is at the same time meaningful (signifying more than the aggregate of individual goods) and compatible with the idea of individual rights.

Constitutional Rights for Whom? New Challenges to the Personhood in Law
Tomasz Pietrzykowski, Dr., University of Silesia (Katowice)

Personhood in law relies on an ascription made by the law itself. Thus, the content of the law decides who or what is recognized as a person capable of holding legal (in particular – constitutional) rights or duties. Relevant rules and doctrines are however based on reasons that support ascribing or denying the status of a person in law to various classes of subjects. On the moral grounds contemporary Western legal systems basically recognize as persons all living human beings. On more pragmatic basis they also ascribe such personhood to some organizational structures of human beings.
After centuries of development of such conceptual foundations of the law in the XXI century the idea of personhood in law seems to face challenges that may force our societies to reconsider the very essence of recognition and ascription of personhood as capacity to hold legal rights and duties. They are brought by the progress of science and technology that may soon make lawmakers unable to keep the basic conceptual problems of legal personality and its moral aspects unanswered. They include scientific evidence proving that at least some animals are conscious or even self-conscious agents, the rapid progress in medical experimentation on creating inter-species hybrids and chimeras, including organisms built partially of hu-

man and partially of animal genes or cell lines. Furthermore, they include also the advancing technologies of "cyborgisation" of human bodies and brains as well as recent progress towards realization of so called embodied AI.
All those challenges seem to pose essentially the same question. They force lawmakers to consider whether recognition of legal personhood of a human organism should be related to its membership in a specific biological species or – alternatively – to possession of some morally relevant features, such as sentience, self-consciousness and other higher cognitive and emotional capacities. Up to certain moment in history this dilemma was blurred by the fact that only some humans were believed to deserve a privilege of full recognition in law (excluding slaves, women, aliens etc.). Later, it continued to remained blurred by the belief that as a matter of empirical fact only biological human beings may possess features that are critical to claim a special personal status in law. The first assumption has been overcome in the last centuries. XXth and XXIst century science and technology seems to seriously undermine also the second one.

Compulsory Voting: Is It Possible in Today's Poland?
Monika Giżyńska, Dr./Paweł Polaczuk, Dr., University Warmia and Mazury (Olsztyn)

The presentation will examine selected issues relating to the institution of compulsory voting. The Authors will try to answer questions about what compulsory voting is and what the aims of implementation thereof, in democratic political systems, are. The Authors – based on the analyses and the results of their survey – will try to answer questions whether in light of the current public mood in Poland it is possible to implement compulsory voting and whether compulsory voting is a panacea for all problems concerning dwindling voter turnout. Another question is whether there are any potential political or social problems that should be taken into account when considering the implementation of compulsory voting.

Section III: "Open Section"

Panel III-1: Concepts in Political and Legal Theory (Friday, 11.30–16.00, Seminar Room)

Why Politics is not Essentially Contested
Bojan Vranić, MA, University of Belgrade (Belgrade)

In some of the major works of contemporary political thinkers – such as Connolly, Macintyre, and Mason - it is assumed that politics is an essentially contested concept. It has been argued that essential contestability disables normative political design, and therefore makes non-valid any conclusive (metaphysical) demands over political domain. However, I believe that if we turn to the original idea of essential contestability presented in Gallie`s work, we can show how their argument is misleading. I will argue that this is the case because politics is not a concept at all. Politics is a common nominator of a set of concepts such as "power", "state", "liberty", "legitimacy", etc. I believe that Gallie's idea was that these concepts acquire their meaning through use in object-language, while politics is a nominator of a second order, and therefore cannot be contested. The paper aims to demonstrate that this is the correct interpretation of Gallie's argument of the championship.

Philanthropy: *Power with* in International Relations
Lena Partzsch, Dr./Doris Fuchs, Prof. Dr., University of Greifswald/University of Münster (Greifswald/Münster)

In international relations, a long list of private donors has joined governments in addressing global problems and their financial contributions are mind-boggling. We argue that the transformational potential of philanthropists such as Bill and Melinda Gates and Michael Otto relies largely on mechanisms of *power with* others, i.e. cooperation and learning. There are situations in which power is neither attributed solely to A nor to B, but to both. Comparing the cases of Gates and Otto, however, we simultaneously emphasize that *power with* is not exercised independently from *power over* dimensions. If we simply assume philanthropists to be do-gooders, we may become inattentive to often hidden or invisible conflicts of interests and values.

A Post-analytical Concept of Meaning in Polish Legal Thought
Michał Stambulski, LL.M., University of Wroclaw (Wroclaw)

Associated with the Vienna Circle philosopher Otto Neurath compared science to a boat. If you want to repair it you must do it piece by piece, since floating on the water all the time, you do not have a strong foothold. The presence of water prevents the revolution, understood as global rebuilding. When you replace one fragment the rest of the boat remains untouched. This metaphor illustrates the condition of post-analytical legal reason. Dogmatists and legal philosophers and are in the same boat. After years of being on solid ground of analytical philosophy the consequences of linguistic turn caused instability and post-analytical conceptions of language such as post-structuralism and neo-pragmatism. Lawyers-dogmatists are inside the boat so, driven by internal rationality, they do not have to worry about what is going on outside. The task of theorists is to further undermine stability (hermeneutics of suspicion), or repair the boat (hermeneutics of recollection).
The purpose of this presentation is to think about the consequences of linguistic turn in jurisprudence, in particular to collect and systematise the arguments in favor of the post-analytical conception of language.

Domination as the Source of Injustice
Marta Soniewicka, Dr., Jagiellonian University (Krakow)

The paper shall elucidate the problem of domination in the political and the legal context. The analysis of the concept of domination is aimed at providing a deeper understanding of the sense of justice. It will be argued that domination is one of the most important faces of injustice, and that non-domination is one of the core principles of justice. It will be claimed that the concept of non-domination may provide another, and more accurate, criterion of justice than equality or freedom, and that it may help in overcoming their tension in the liberal thought. It will be discussed what are the sources, the characteristics, and the main products (including resentment) of domination in a society and how it can be challenged. The problem of domination as the source of injustice will be illustrated with the current examples, such as the economic crisis (the problem of the “tyranny of the markets”), the political transformations (the problem of the domination of ideology or a system), the war on terror (the problem of the domination of “the rule of politics” and dirty hands).

Virtue Jurisprudence: Prospects and Limitations
Antal Szerletics, PhD, National University of Public Service (Budapest)

Virtue jurisprudence is a new trend in legal philosophy that focuses on the role of virtues in the understanding of the legal system. Inspired by the relative success of virtue ethics, rep-

resentatives of this approach argue that virtues are essential when evaluating the content of legal regulations or creating a plausible account of judicial reasoning. In this paper, I will critically examine the prospects and limitations of this new approach. Relatedly, the paper also aims to offer a virtue-centered reading of legal paternalism (the protection of individuals from self-harming activities by legal means). I argue that the main underlying virtue behind paternalistic practices (e.g. parenting, nursing, medical practices, etc.) is the virtue of care and paternalistic practices, insofar as they are genuine representations of this virtue, contribute not only to the development of the protected person but also to the character development of the caregiver. Thus, virtue jurisprudence might offer a valuable framework for the reinterpretation of this particular legal and moral phenomenon.

Issues of Determinacy and Objectivity of Law in Modern Legal Philosophy
Filip Golba, LL.M., Jagiellonian University (Krakow)

The purpose of this paper is to present some of the discussions over the issue of whether legal rules are constraints on court decisions and other instances of manifestation of coercive power of state. Being one of the main problems deliberated in twentieth century legal theory, the questions whether law is determinate and whether it is objective have been answered in many ways with wide variety of arguments casted in favour of those answers. Although some recourse to historical disputes is going to be made, the paper will be focused on modern debates on that topic.
Its first part is to be devoted to detailed conceptual analysis of notions of determinacy and objectivity along with examination of the relation between them. A few examples of meanings ascribed to this concepts in legal philosophy will be provided.
That part will be followed by presentation of arguments in favour of and against the determinacy and objectivity of law formulated among followers of legal positivism, theorists inclined to views of Ronald Dworkin and scholars involved in Critical Legal Studies movement. Analysis is going to take into account not only those possible causes of indeterminacy that are peculiar to law but also those which are object of interest of philosophers of language.
Further discussion will concern the issue of consequences of particular resolutions of determinacy and objectivity problems for the legitimacy of judicial decisions as seen by the representatives of aforementioned standpoints in legal philosophy.

Panel III-2: Legal, Sociological and Political Theory in the History of Ideas
(Friday, 16.30–17.30, Conference Room)

The Weber-Hart Nexus and Beyond
Péter Cserne, Dr., University of Hull (Hull)

As Hart indicated, The Concept of Law is not descriptive sociology itself but “provides the tools for descriptive sociology” (interview with Sugarman, at 291). Nicola Lacey’s biography has given some new attention and momentum to what would otherwise have been a rather limited inquiry in intellectual history: tracing the impact of Max Weber’s writings, with or without Winch’s mediation, on Hart’s legal theory. Starting with a brief summary of the facts, anecdotes and speculations surrounding this specific point about Hart’s intellectual sources, the paper looks beyond this point both backwards and forwards. It suggests that Weberian sociology provides a possible connection between legal history and legal theory. This connection starts with (1) the young Max Weber, law student and legal researcher intensively engaged with legal history; continues with (2) Weber moving via economics to verstehende Soziologie thus laying the foundations of a unique version of descriptive sociology (of law). The transition between (1) and (2) refers to the juristic origins of certain Weberian concepts

and ideas, and the possible effects of Weber being a lawyer on his sociological method. This issue has been studied extensively by Weber scholars (e.g. Gephart, Marra, Quensel, Treiber, Turner and Factor) who suggest that, as a matter of intellectual history, much of Weber's sociology originates, in one way or another, in late 19th century German historical and jurisprudential discourses on law. The significance of the Weber – Hart nexus, however, can be best understood in when the next step is considered: (3) inspired by both Weber's and Hart's methodological insights, new theoretical accounts of law can be provided, as exemplified by H Ross's Law as a Social Institution (2001) or L Kornhauser's 'Governance Structures, Legal Systems, and the Concept of Law' Chicago-Kent Law Review (2004). The paper argues that such recombination of Weberian or Hartian conceptual and methodological tools can serve as a useful inspiration for new theoretical accounts of law.

On Paul Ricœur's Political Theory

Marcin Pieniążek, PhD, Andrzej Frycz Modrzewski Krakow University (Krakow)

Paper introduces ethically grounded political theory, based upon Paul Ricoeur's definition of ethical aspiration - "the intention of achieving 'a good life' with and for another man in just institutions". Following Ricoeur, the quoted definition constitutes the basis for a conception of interrelations of a man with the human community, discussed as interrelations between an individual and a democratic society. It is the core basis of an undertaken argumentation which starts with the microscale of the entity whose characteristic feature is the intention of a good life; then it goes on to "meso" level, i.e. to a interpersonal relationship in broad terms, typical inter alia for contracts; finally the argumentation aims to describe the macroscale of just political institutions. Consequently, the paper presents a homogeneous conception of social structures and interpersonal relationships, based also on the dialectics of idem and ipse elements (selfness and self), as defined by Ricoeur in his major work Soi-même comme un autre.

Panel III-3: Topics in Contemporary Democratic Theory (Friday, 16.30–17.30, Seminar Room)

Constitutional Democracy and Time

Biljana Đorđević, M.A., M.Sc., University of Belgrade (Belgrade)

If the people is a partnership of those who are living, those who are dead, and those who are to be born, as Burke claimed, it would seem that democratic reconstitution of the peoplehood should be a project also concerning the dead, the living and the future generations. Some authors see constitutional constraints as precommitment endorsed by the people, that is, as the element of self-government although for many others these constraints are interpreted as attack on democracy. Recently, proposals for new forms of political representation of posterity have been formulated although future generations that are not there yet (or may never be) cannot really be represented since they cannot authorise their representatives to act on their behalf. Also, there are disagreements on the matter what would embody their best interests just as there is disagreement on what are the best interest of the living. The living, however, may express their preferences, concerns and commitments through their participatory rights. But for whom their reasons for one type of politics over others, one kind of society over other, are supposed to be valid and justified? Only for themselves, the living, or for also for the past and future generations? In this paper I want to examine the relationship between constitutional democracy and time, that is, the relationship between the empirical people once they exercise constituent power (usually revolutionary minority who talks in the name of the people) to produce a new constitutional order on one hand, and an ideal quality of the people understood as the partnership of the dead, the living and the unborn, which legitimises revolutionary actions and constitutional changes, on the other hand.

Ethnic Representation in National Legislatures –
Normative Foundations and Challenges

Konstantin Sachariew, M.A., University of Rostock (Rostock)

In reports of minority rights groups and the literature on democratic theory one can often find the claim that one of the criteria for a democratic parliament is that it should reflect the social diversity of the population in terms of gender, language, religion or ethnicity. Frequently this goes together with the demand for group representation through specialised measures and institutions that expand the traditional understanding of representative government and alter the electoral competition. These demands have been both supported and challenged by democratic theorists, governments and minority groups. This paper reviews the current literature on group and descriptive representation and focuses especially on the normative debate that has formed around these. The aim of this is to reach a better understanding of ethnic minority political representation and the norms and standards for its assessment.

The following paper is structured in three parts debating the foundations of political representation in democratic theory, the arguments in favor of group representation and the case for descriptive representation of minorities.

One of the main findings of this review is, that one of the strongest arguments in favor of measures, that are intended to increase the political inclusion of disadvantaged groups, is an argument about justice. From a democratic point of view, political exclusion is unjust. On the basis, that all citizens ought to be equal politically, the exclusion from decision making creates injustice.

Regarding group rights, there is a whole range of notions, which advocates of political inclusion have compiled. Among them is the understanding that the lack of group rights can be unjust, as it de facto favors the status quo of majority dominance an minority exclusion. Group rights are seen as a remedy for this. They are further believed to improve deliberation in the political process. And they are expected to create trust and enhance communication between minorities and majority representatives, and therefore increase the likelihood of a substantive representation of minority interests. Adversaries of group rights in the other side see the installment of affirmative practices as morally arbitrary and politically dangerous. According to the opponents pf the politics of difference the granting of group rights to a particular group can discriminate other minorities, the majority or sub-groups within the group.

The concept of descriptive representation faces similar justifications and critiques. Proponents of descriptive representation point out the importance of positive role models, the importance to incorporate the specific interests and perspectives of minorities in a deliberative process, and an expected revitalisation of democracy through the increase of chances for participation by disadvantaged groups. Critics of “the politics of presence” see either no added value in the resemblance of deputies and constituencies, or point to the dangers of a weaker accountability of minority representatives or of a suppression of inner-group diversity.

As can be seen, most of the arguments refer either to perceptions of justice and injustice or to the value of minority representation for deliberation. A common conclusion in the literature on this topic is that every discussion of special rights and measures needs to focus on the context of particular societies.

Panel III-4: Political and Legal Culture in Central and Eastern Europe
(Saturday, 9.00–11.00, Seminar Room)

Perspectives of a Political Culture in Europe: The Cases of Germany, Switzerland, Slovakia and Hungary and Their Broader Significance
Karin Rogalska, M.A., University of Zurich (Zurich)

What we call united Europe today has only little in common with the "Europe of the six" shaping it in the beginning. However, several rounds of enlargement did not lead to radical structural reforms. A debate on a contemporary framework for the European Union was opened relatively late. Whenever we reflect on new structures for the European Union, there is talk of "political culture" too. Political culture is meant to be a tool making the Europeans master substantial challenges and define clearly their core values.
We assume that it is possible to develop a unique European political culture since there are certain approaches to it already. We shall demonstrate it by using the examples of Germany, Switzerland, Slovakia and Hungary. We define the term of political culture and indispensable underlying conditions for its realisation. Subsequently, we discuss certain elements of political culture and their significance for each of the four countries. In conclusion, we derive minimum standards of the single elements on national and international levels what will help us make clear in how far each of the four countries can be held for integrated into the united Europe.
In the sequel, we can answer such questions as: Do the four countries contribute to a European political culture and can they contribute to it at all? By which parameters do we find out what aspects of political culture they have in common? What does all that mean for the perspectives of political culture in Europe in general?

National Identity of the Political Parties in the Visegrad Region in Transnational Perspective
Michal Vít, Mgr./Jan Husák, Mgr., University of Leipzig/University of Economics Prague (Leipzig/Prague)

Political parties are one of the most important actors in the social discussion on political issues. In the political system, they represent people and their opinions as well as they significantly shape public discourses toward various issues. Therefore their identities and perceptions of certain issues as well as electoral support are important indicators about their states and citizens and the politics as such. Party identities are often tackling the issue of nationalism, national feelings together with political/social mobilisation against threats.
Therefore we focus on them to extract basic approaches and their special regards to national and domestic and external threats related issues. We have been examining the political parties in the Visegrad region, the Czech Republic, Poland, Slovakia and Hungary with this special attempt. We have been researching the relevant political parties as well as we included non-parliamentarian significant nationalistic and extreme right parties. We have been qualitatively researching relevant election programmatic and manifestos in the period from 2005 till 2012 to get the up to date picture about the identities and policies of the parties. This limited period is important because of the political context, when all of the countries are already members of the European Union. Our aim is to make comparison in the contemporary central Europe in transnational perspective – can we define any similarities in national and threat definition? Do the political parties primarily indicate domestic or external threat, if so; are there any similarities between Visegrad states? Is the threat of nationalising of central European political scene a new state of art of the current politics? These questions must be understood in context of the EU-integration (new) shifts towards deepening of the political and fiscal union.
At the end we identified eight different concepts how is the threat and the nation considered

in the region. Five of these concepts are present by the political parties in more of the countries; three of them are more country-specific. In the contribution I will present these concepts and especially their thereat and national perceptions. Do the parties determine the external threats to mobilise their electorate (e. g. Using capitalism, neoliberalism, world financial capital flows as the core element of the current political situation/crisis) or do the parties defend the globalisation and supranational integration of EU as a social and economical challenge of the globalised world? And finally, how are the national perceptions of political parties shaped by process of Europeanisation and transnationalisation?
Bringing Visegrad states in to one research offers the comparison not only "new" EU-members as such but also as a homogeneous region in context of European integration after the 1990. Is there a clash in the economic issues between the parties or is the crucial question the need for national mobilisation by certain "threats"?

Multiculturalism in the Post-Yugoslav Region
Tijana Dokić, MA, University of Belgrade (Belgrade)

The Western Balkans was not immune to the issue of defining minorities, quite the contrary. In the states established as a result of disintegration of Yugoslavia the very perception of who the minorities are is mostly blurred by unclear opinions on who was a majority, and who was a minority, in which area, and at which point in time. The perception of minorities significantly defines the process of nation-building. That is why I will make this process the focus of my analysis. When democratisation of communist countries is discussed, the European model of modern state building is usually either overlooked or rarely considered. It clearly demonstrates that there is no democracy without nation and nation offers to its members a specific form of identity which is based on recognition of the "other". Democracy as such provides neither clear principles nor appealing values which would singlehandedly determine and reaffirm the answer to the question: Who are we, and why are we together? Perhaps this conclusion does not contribute a great deal when it comes to implementation of democratic policies which focus on, for instance: fair and democratic elections, legislation procedures, executive power authority, economic policies, but when it comes to policies dealing with identity (such as multicultural policies) it is necessary to relate to the issue of the relationship between nation-building and the importance of minorities as "others", as they are most often defined in this process. In some parts of the Thesis I shall limit the discussion specifically to the republics of former Yugoslavia, because in this region the process of nation-building, the creation of a modern national state, occurred almost two centuries after it occurred in other European countries. A special experience of coexistence of different cultural groups without clearly defined political identity lead to a certain form of respect and appreciation for differences. I shall call this concept „neighbouring multiculturalism". I will also demonstrate how the existence of a close "other" in the process of building political identity and community lead to explosion of international "non-recognition" and difficulties in understanding and implementation of multiculturalism today.

Legal Culture in Contemporary Serbia: Values, Practices and the Rule of Law
Danilo Vuković/Slobodan Cvejić, Assistant Professor/Associate Professor,
University of Belgrade (Belgrade)

In the presentation we analyse one dimension of external legal culture in contemporary Serbia – attitudes towards the rule of law. Our findings are derived from the survey conducted in 2012 on nationally representative sample of 1100 respondents. In the first part of the presentation we discuss the notion of legal culture and its dimensions. Following Friedman's distinction between external and internal legal culture, we focus on the former. Legal culture is conceived as a set of values, attitudes and practices of ordinary citizens related to law. We use

operationalisation of this dimension of legal culture proposed by Gibson and Caldeira to be able to perform cross-country comparisons. The analysis focuses on a single dimension of legal culture: attitudes towards the rule of law. Literature review indicates that this dimension of legal culture has two dimensions: (1) it reflects the level of entrenchment of the rule of law in the particular society and prevailing practices related to law; (2) it is a set of values and attitudes that influence (though not exclusively) day-to-day attitudes and decision with regards to the law and thus indirectly makes a part of the social foundations of the rule of law.
In the second part of the presentation we analyse attitudes towards the rule of law. We identify approximately a quarter to one third of Serbian population as "legal sceptics" and roughly 10% of "legal nihilist". We thoroughly analyse their socio-demographic features, values and practices with regards to the law in order to understand who they are and why they are sceptical vis-à-vis the role of the law in contemporary Serbian society. We compare our data with those from EU, Russia and USA and identify similarities with regards to the key determinants of the support to the rule of law - socio-economic position of respondents (class position), the level of education and value orientations.
In the third part of the presentation we discuss some methodological issues that emerged during the analysis. Cross-country comparisons show that attitudes towards the rule of law do not correlate with the level of development of the rule of law in a particular society. This opens up a possibility that an intermediary variable explains the attitudes towards the rule of law and perhaps questions the consistency of the methodology often used to measure external legal culture. In this part of the article we will try to answer this question using the Serbian data set.

Panel III-5: Media, Social Networks, and Democracy (Saturday, 11.30–13.00, Seminar Room)

Social Networks in Virilio's Theory of "Dromology"
Mary Koysina, B.A., National Research University "High School of Economics" (Moscow)

The report's object is the structure of social network. The research subject is the work of social networks in Virilio's theory framework. The main tasks of this essay: firstly, to define the main functions and features of social media nowadays described by Castells; secondly, to point the main principle of "Dromology"; thirdly, to describe social media features and functions with Virilio's theory tools.
The hypothesis of this mini-research is work of social networks is run by "Dromology" tools, which were formulated by Paul Virilio in his works. We have the research question: Is Virilio's theory workable or not? Can we understand the work of social network in Virilio's theory framework?

Collective Action Frames and Information Diffusion in Social Networks
Yulia Lukashina, M.A., University of Technology Dresden (Dresden)

Frame-building in the Web seems to be very specific since a lot of agents, who never even had a chance to participate in collective action frame-building before, now do so. And frame-building happens not as a negotiation between stable set of actors; it develops simultaneously with its spread through a given population. So, to study such frame-building means to find a scientific paradigm which pays attention both to temporal imagination of given process and geographical or/and social expansion. Diffusion of innovation theory (Rogers 1983) allows doing so. From such point of view, frame is considered as an innovation – "an idea, practice, or object that is perceived as new by an individual or other unit of adoption". "(Ibid: 11).
In previous research frame was studied as a factor affecting diffusion of protest activity. In do-

ing so, scholars imagined a movement as a proliferation of events (Oliver&Myers 1998). But understanding movement as a set of beliefs requires seeing frame as an object of study, since beliefs cannot diffuse as separate entities, they are bound with each other in accordance with some logic.
Diffusion theory always poses two main questions: which part of a given population has already adopted a given innovation, and, what has forced the adoption? Applying this to social movement research, one can ask following questions, transforming the former one from quantitative into qualitative: which groups of population has adopted frame by some time point, and what has forced the adoption of this frame and make them reject another one?
Adoption of frame means that people belonging to different social groups, challenging existing social order, have started to compose their messages (postings etc) in accordance to this frame, and that they perceive from now reality in the way the frame suggest it is. Adoption of innovation includes knowledge, persuasion, decision and implementation (Rogers, 1983).
Any collection action frame includes 5 elements: description of the problem, possible causalities, possible solutions, chances for success, and self-legitimation (Gerhards 1995). Each social group suggests her own understanding of every component. In the end, frame is something like a puzzle made from different elements.
The main space for bottom-up frame building is social networks, since they more or less reproduce existing social relationships or such relationships which could have happened in reality if communicating people did ever meet. For some movements, groups in social networks were the main source of information about time and place of rallies. Wall – the „home page“ the group and events – is, as a rule, available for postings produced by users. Therefore users can contribute to the creation of frame or negotiation about existing frame. And they do it rather actively. Users and administration often include link to other web-resources into their postings. In this way they „borrow“ frames.
So, the methodology of research supposes collecting postings from groups in social networks and content analysis of these sampling units.

Media and Democracy in South East Europe: Contrasting the Role of Public Service and Private Media in Democratisation in the Region

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The assumption that the media and democracy are closely related to each other makes discussions about the media's role in democratisation very hard to recede. This presentation continues previous personal research on the relationship between media and democracy in post-communist countries, particularly in South East Europe (SEE). The research is motivated by the ongoing transformation of the media landscapes in SEE since the political, economic and social changes of the 1990s. It is generally believed that public service broadcasting serves the public interest and attends to multiple and diverse publics, thus fulfilling the normative standards and democratic functions of media. In lieu of the decline of the role of public service broadcasting in Western Europe due to digitalisation and market expansion, this research papers aims at analyzing the ways in which public media can contribute to democratisation in South East Europe compared to the role of private media. The paper attempts to elaborate a revised understanding of the public media as the ideal public sphere in the Information Age in the twenty first century in the context of SEE considering dimensions such as: (i) the provision of quality journalism; (ii) arenas for deliberation and debate; (iii) the provision of complex communication spaces to accommodate various and diverse publics, ideas, issues and perspectives; (iv) citizens' information rights; and (v) greater access to marginalised groups in media platforms. The paper will examine the relationship between media and democratisation as complex, dynamic and under ongoing transformation, whereby the quality of democracy is a function of the quality of media and vice versa.

Notes

Entertainment Program (Saturday afternoon and night)

Boat Trip on the River Ryck and the Bay of Greifswald

After the official closing of the conference on Saturday noon and the lunch, we invite you to a boat trip on the River Ryck and the Bay of Greifswald. We will take the “MV Stubnitz” from the Greifswald museum harbour at 15.30. The trip will last two hours and fifteen minutes. The tour is included in the conference fee! Food and drinks on board have to be paid individually.

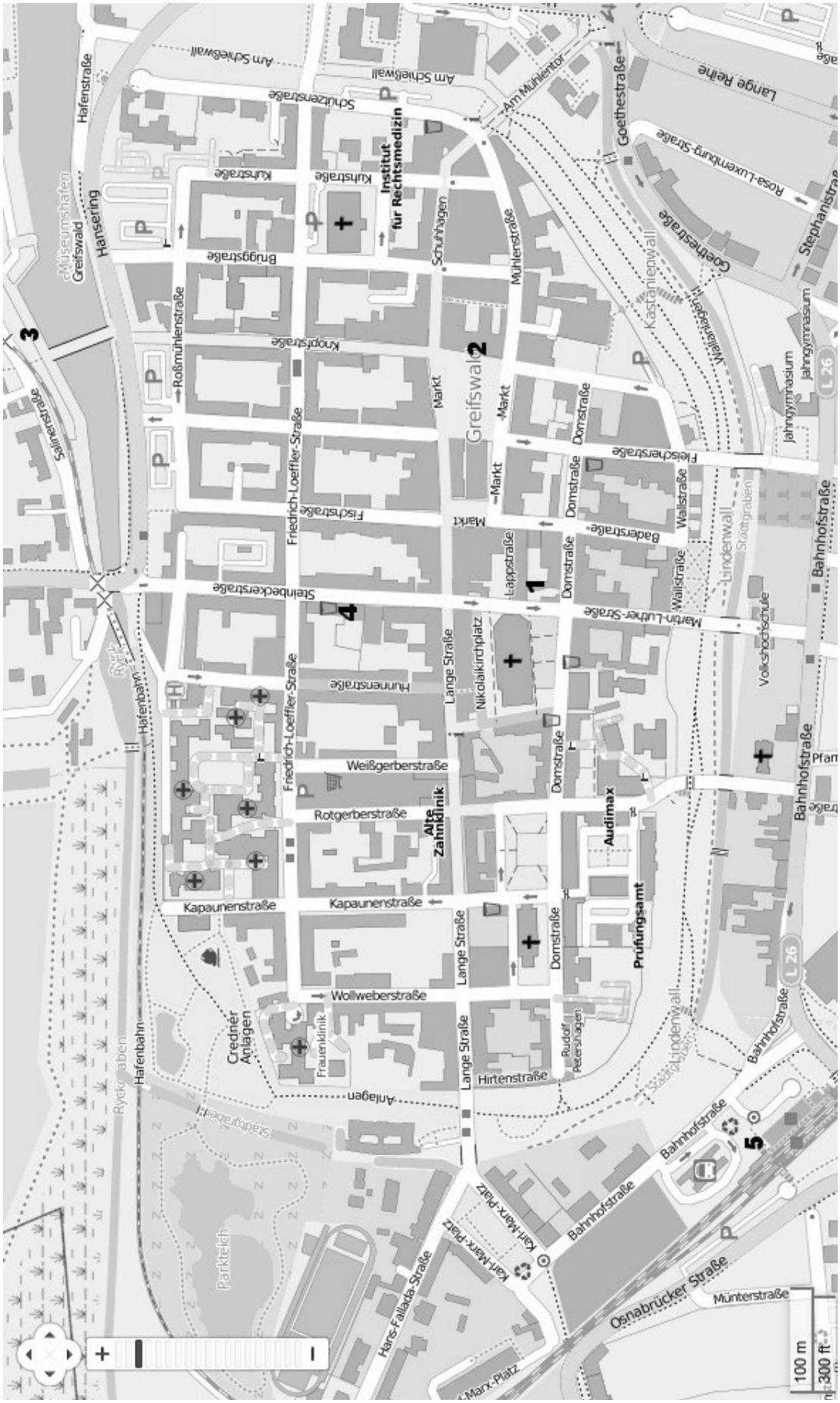
Meeting time: 15.15.
Meeting point: Museumshafen (museum harbour) Greifswald.

Saturday night fever feat. “Lupus in Fabula” (Rock’n’Folk)

Lupus in Fabula makes pub rock and coastal folk. The four musicians Matthias (guitar/vocals), Stefan (bass, accordion, vocals), Franziska (violin) and Stefan (drums) come from some coastal and rural villages of Western Pomerania. From their journeys to the West and to the East of Europe, they took some good old folk songs home to combine them with their own ideas – and to create their own tunes and lays. The gig will take place in “DAS EXIL Music Pub” – Lupus in Fabulas home pub in Greifswald. Have a good beer, listen and enjoy!

location: “DAS EXIL Music Pub”, Steinbecker Street No. 16.
time: from 21.00 open end.
Free admission! Food and drinks have to be paid individually.

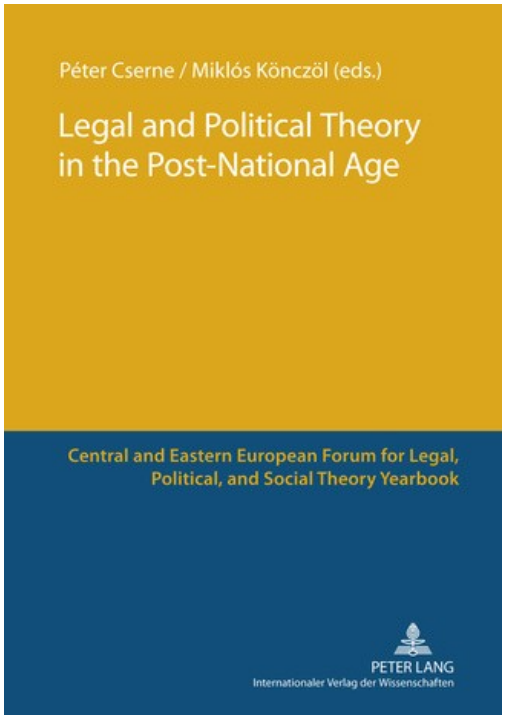
Map of Greifswald

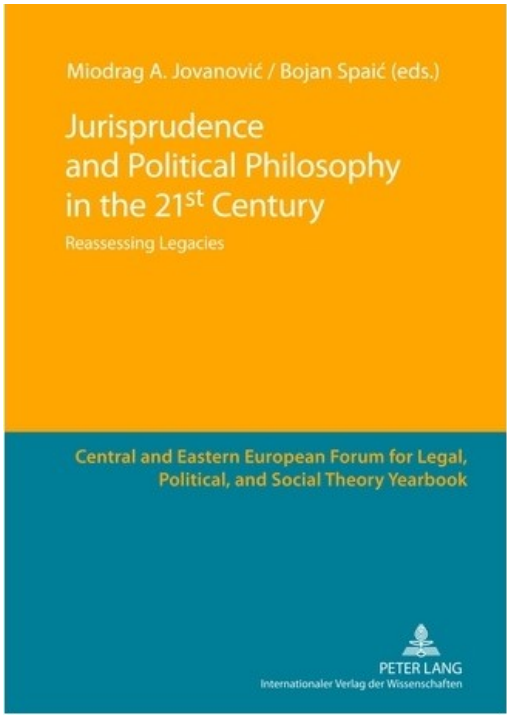


1 … Alfried Krupp Wissenschaftskolleg (conference venue)
2 … Braugasthaus “Zum Alten Fritz”, Markt No. 13
3 … Museumshafen (museum harbour)
4 … “DAS EXIL Music Pub”, Steinbecker Street No. 16.
5 … Main train and bus station

Central and Eastern European Forum for Legal, Political, and Social Theory Yearbook

Since 2011, selected contributions to the annual CEE Forum's conferences have been published in the "Central and Eastern European Forum for Legal, Political, and Social Theory Yearbook". It is published with Peter Lang International Academic Publishers. So far, two volumes have been published; the third one, containing selected papers from the 2012 conference in Celje (Slovenia) is currently being prepared.





The second yearbook, containing selected contributions of the 2011 conference in Belgrade, was recently published:

Jovanović, Miodrag A./Spaić, Bojan (eds.): Jurisprudence and Political Philosophy in the 21st Century. Reassessing Legacies. Frankfurt/Main et al. 2012, VIII, 167 pp. ISBN 978-3-631-62207-0 hb.

The yearbook contains 13 papers in the four section "Reassessing Old Jurisprudential Accounts", "Methodological Debates in Contemporary Jurisprudence", "Legacies of 20th Century Legal Positivism" and "Justice after Rawls".

The first yearbook, containing selected contributions of the 2010 conference in Budapest, was published in 2011:

Cserne, Péter/Könczöl, Miklós (eds.): Legal and Political Theory in the Post-National Age. Selected papers presented at the Second Central and Eastern European Forum for Legal, Political and Social Theorists (Budapest, 21-22 May 2010). Frankfurt/Main et al. 2011. XII, 196 pp., 2 graphs. ISBN 978-3-631-61582-9 hb.

The yearbook contains 14 papers in the four sections "Concepts and Methods in Legal Theory", "New Challenges in Ethics and Moral Philosophy", "Courts Acting and Interacting" and "Law and Politics in International Relations".

During the conference, copies of each yearbook are on offer.

The Stiftung Alfried Krupp Kolleg

On 20th June 2000 the Alfried Krupp von Bohlen und Halbach-Stiftung, the State of Mecklenburg-Vorpommern and the Ernst Moritz Arndt University of Greifswald established the Stiftung Alfried Krupp Kolleg Greifswald. This is a private-law foundation which in accordance with its statutes supports academic studies and research at the Ernst Moritz Arndt University of Greifswald by running the Alfried Krupp Wissenschaftskolleg (Alfried Krupp Institute for Advanced Study).

The foundation is independent and enables academic work of continuously high quality. This independence was the central aim of Professor Dr. h. c. mult. Berthold Beitz, Chairman of the Board of Trustees of the Alfried Krupp von Bohlen und Halbach-Stiftung in initiating the Alfried Krupp Wissenschaftskolleg.

The Alfried Krupp von Bohlen und Halbach-Stiftung provided a large part of the endowment in the form of land, buildings and equipment for the Institute for Advanced Study. The cash assets for running costs are provided in equal parts by the State of Mecklenburg-Vorpommern and the Ernst Moritz Arndt University of Greifswald. These are supplemented by staff funds of the University guaranteed in the long term.

The organs of the foundation are the Board of Trustees, which determines and monitors the principles of the Foundation‘s work, the Executive Board, which manages the Foundation and represents it, and an academic Advisory Council, which advises the Foundation‘s Board of Trustees and the Executive Board.

The CEE Forum

The Central and Eastern European Forum of Young Legal, Political and Social Theorists (CEE Forum) was initiated in 2009 by a group of young researchers working in those fields at the University of Silesia in Katowice, Poland. It was the aim of the initiators to change the currently dominant practice of following the paths created mainly in other parts of the world and to try to establish a community able to provide a competitive environment for original investigations in the field of legal, political and social theory. They were dissatisfied with the situation in which they were unaware of what colleagues from their neighbourhood were working on and wanted to stress the intention of establishing ties allowing exchanging ideas, leading to independent and original developments.

The motivating ideas behind the Forum are twofold. Primarily, the annual conferences are academic events which provide the opportunity for junior legal scholars, political and social scientists to present their research. So far, half of the presentations were theoretical, the others discussed topical legal, political and socio-economic issues in Central and Eastern Europe. A number of researchers put a special emphasis on the impact of theoretical insights in particular national or regional contexts; others addressed local problems in a comparative manner and in wider theoretical contexts. Since 2011, the Forum publishes a Yearbook with a selection of the best conference contributions of the previous year. So far, two volumes of our “Central and Eastern European Forum for Legal, Political, and Social Theory Yearbook” were published.

Second, the Forum contributes to establishing and maintaining ties and networks for future common projects. With an increased academic mobility within Europe, young researchers from Central and Eastern Europe follow different strategies. Some are working at universities in their home country, others study or seek jobs at academic institutions in Western Europe and beyond, still others combine these strategies. These people often face difficulties in finding contacts to scholars with similar interests at other places of the world often even if they are working in the neighbouring countries. The Forum shall contribute to establishing a genuine community of young legal, political and social theorists in Europe.